

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ST. PAUL FIRE AND MARINE INSURANCE
CO., a Minnesota corporation,

Plaintiff,

v.

RWR MANAGEMENT, INC., d/b/a R.W.
ROBIDEAUX & CO., a Washington
corporation; RWR-NORTHWEST, INC.,
a Washington corporation; CITY OF
SPOKANE, a Washinton municipal
corporation; and KEMPER CASUALTY
INSURANCE COMPANY, a Delaware
corporation,

Defendants.

NO. CV-05-0294-EFS

**ORDER RULING ON MOTIONS
FOR SUMMARY JUDGMENT RE:
COVERAGE**

A hearing was held in the above-captioned matter on October 19, 2006. Plaintiff St. Paul Fire and Marine Insurance Co. ("St. Paul") was represented by Craig Bennion. Laurel Siddoway appeared on behalf of Defendants RWR Management, Inc. (hereinafter, "Robideaux"), RWR-Northwest, Inc., and the City of Spokane ("the City"); while, Scott Sawyer appeared on behalf of Defendant Kemper Casualty Insurance Co. ("Kemper"). Before the Court were (1) St. Paul's Motion for Summary Judgment (Ct. Rec. 32), (2) Robideaux Defendant's Motion for Summary Judgment on Claims by and Against St. Paul (Ct. Rec. 49), and (3) Cross-

1 Defendant Kemper's Motion for Summary Judgment (Ct. Rec. 42). After
 2 reading the submitted materials and relevant legal authority and hearing
 3 oral argument, the Court was fully informed; this Order serves to
 4 supplement and memorialize the Court's oral rulings denying in part and
 5 denying with leave to renew in part St. Paul's motion, granting in part
 6 and denying as moot in part Robideaux's motion, and granting Kemper's
 7 motion.

8 **I. St. Paul's Motion for Summary Judgment (Ct. Rec. 32) & Robideaux
 9 Defendant's Motion for Summary Judgment on Claims by and Against St.
 Paul (Ct. Rec. 49)**

10 St. Paul and Robideaux filed what are in essence cross-motions for
 11 summary judgment regarding what coverage and duties are owed under an
 12 insurance policy issued by St. Paul to Robideaux. Specifically, St. Paul
 13 asks the Court to find as a matter of law:

14 (1) St. Paul did not and does not have a duty to defend or to
 15 indemnify Robideaux in the Federal Litigation¹ because
 16 Robideaux failed to notify St. Paul of the claims in that
 Lawsuit while the St. Paul policy was in effect;
 17 (2) St. Paul did not and does not have a duty to defend or
 18 indemnify Robideaux in the Federal Litigation because all
 19 claims against Robideaux in the Federal Litigation are
 20 specifically excluded from coverage by the St. Paul policy;
 21 (3) St. Paul did not breach the insurance contract issued to
 Robideaux;
 22 (4) St. Paul did not act in bad faith by denying a defense and
 23 coverage in the Federal Litigation after receiving first notice
 24 of that lawsuit in April 2003, more than two years after its
 25 policy expired; and

26 ¹ In the pleadings filed in connection with these motions, the
 27 Federal Litigation is actually referred to as the "Bond Litigation" and
 28 the State Litigation is referred to as the "Walker Litigation." The
 29 Court utilizes the phrases "Federal Litigation" and "State Litigation"
 30 for consistency purposes.

(5) St. Paul owes nothing to Robideaux or the City and dismissal of Defendants' counterclaims against St. Paul is appropriate.

3 In response, Robideaux seeks (1) a declaration that St. Paul owed duties
4 to indemnify and to defend Robideaux with respect to the City of
5 Spokane's claims asserted in the Federal Litigation and (2) entry of
6 summary judgment in favor of the City of Spokane on the City's breach of
7 contract counterclaim. As set forth below, the Court finds the St. Paul
8 Policy provides coverage for the City's claims raised against Robideaux
9 in the Federal Litigation because Robideaux timely made and reported the
10 City's Federal Litigation contribution claim given that it was related
11 to the State Litigation claims and because the securities claim exception
12 does not apply.

A. Brief Factual Statement²

The parties entered into a claims-made insurance policy (hereinafter referred to as, "St. Paul Policy") providing coverage from February 7, 2000, to February 7, 2001. (Ct. Rec. 86 ¶ 1.) In July 2000, Robideaux was sued in state court by the City, in addition to a number of other Defendants ("the State Litigation"). *Id.* ¶ 2. Robideaux provided notice

² These are the barest skeletal facts, which are taken from the parties' Undisputed Facts submission (Ct. Rec. 86). Many more facts will be added in conjunction with the analysis of particular issues which will add much flesh to this brief factual background. A recitation here of all of the pertinent facts which bear on the issues being decided in this Order would make little sense without providing context provided by the subsequent analysis.

1 of this lawsuit to St. Paul on February 7, 2001, by way of a "Claim
 2 Report"; there is no dispute that the report of the State Litigation was
 3 timely. *Id.* ¶¶ 8 & 9. In April 2001, the City asserted a contribution
 4 claim against Robideaux in the Federal Litigation. *Id.* ¶¶ 16 & 17.
 5 Robideaux requested coverage for the City's Federal Litigation
 6 contribution claim; St. Paul denied coverage. *Id.* ¶ 23.

7 **B. Standard**

8 Summary judgment is appropriate where the documentary evidence
 9 produced by the parties permits only one conclusion. *Anderson v. Liberty*
 10 *Lobby, Inc.*, 477 U.S. 242, 251-252 (1986). The party seeking summary
 11 judgment must demonstrate there is an absence of disputed issues of
 12 material fact to be entitled to judgment as a matter of law. FED. R. CIV.
 13 PROC. 56(c). In other words, the moving party has the burden of showing
 14 no reasonable trier of fact could find other than for the moving party.
 15 *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). "A material issue
 16 of fact is one that affects the outcome of the litigation and requires
 17 a trial to resolve the parties' differing versions of the truth." *Lynn*
 18 *v. Sheet Metal Worker's Intern. Ass'n*, 804 F.2d 1472, 1483 (9th Cir.
 19 1986) (quoting *Admiralty Fund v. Hugh Johnson & Co.*, 677 F.2d 1301, 1306
 20 (9th Cir. 1982)). The court is to view the facts and draw inferences in
 21 the manner most favorable to the non-moving party. *Anderson*, 477 U.S.
 22 at 255; *Chaffin v. United States*, 176 F.3d 1208, 1213 (9th Cir. 1999).

23 A burden is also on the party opposing summary judgment to provide
 24 sufficient evidence supporting his claims to establish a genuine issue
 25 of material fact for trial. *Anderson*, 477 U.S. at 252; *Chaffin*, 186 F.3d
 26 at 1213. "[A] mere 'scintilla' of evidence will be insufficient to

1 defeat a properly supported motion for summary judgment; instead, the
 2 nonmoving party must introduce some 'significant probative evidence
 3 tending to support the complaint.'" *Fazio v. City & County of San*
 4 *Francisco*, 125 F.3d 1328, 1331 (9th Cir. 1997) (quoting *Anderson*, 477
 5 U.S. at 249, 252).

6 **C. Applicable Law and Analysis**

7 As a federal court sitting in diversity jurisdiction, the Court
 8 utilizes Washington law to interpret the St. Paul Policy as it was
 9 entered into in Washington. See *Fed. Ins. Co. v. Scarsella Brothers,*
 10 *Inc.*, 931 F.3d 599, 603 (9th Cir. 1991). Under Washington law,
 11 construction of an insurance contract is a question of law. *Kitsap*
 12 *County v. Allstate Ins. Co.*, 136 Wash. 2d 567 (1998). The entire policy
 13 is to be construed together to give force and effect to each provision,
 14 while giving the policy a "fair, reasonable and sensible construction,
 15 in a manner consistent with the way an average person purchasing
 16 insurance would understand the policy language." *E.Z. Loader Boat*
 17 *Trailers, Inc. v. Travelers Indem. Co.*, 106 Wash. 2d 901, 907 (1986);
 18 *Wash. Public Util. Dists. Utils. Sysm. v. Public Util. Dist. No. 1 of*
 19 *Clallam County*, 112 Wash. 2d 1, 10 (1989); *Valley Furniture & Interiors,*
 20 *Inc. v. Transport. Ins. Co.*, 107 Wash. App. 104, 107 (2001).
 21 Construction of the policy should be consistent with the apparent intent
 22 and objectives of the parties; it should not be construed in a manner to
 23 lead to an absurd conclusion, or render the policy nonsensical or
 24 ineffective. *E.Z. Loader Boat Trailers, Inc.*, 106 Wash. 2d at 907.

25 Here, the primary issues are whether under the St. Paul Policy the
 26 "claim" for the Federal Litigation was both timely "made" and "reported."

1 St. Paul submits it was not; while Robideaux maintains it was. The
 2 policy is a "claims made" policy and specifies:

3 **When This Agreement Covers**

4 **During this agreement or the limited reporting period.** We'll
 5 apply this agreement to claims or suits for covered loss . .
 . only when they're:

- 6 • *first made* or brought against a protected person while
 this agreement is in effect; and
- 7 • *first reported* to us or our program administrator while
 this agreement is in effect, or during the limited
 reporting period, if it applies.

8 We'll also apply this agreement to any covered act or event
 9 first reported to us while this agreement is in effect, or
 during the limited reporting period, if it applies.

10 (Bolding and underlining emphasis in original; italics emphasis added.)

11 1. **The Claim was Timely Made**

12 The St. Paul Policy defines "claim" as "a demand that seeks damages"
 13 and provides:

14 **When we consider a claim or suit to be first made or brought.**
 15 We'll consider a claim or suit to be first made or brought
 against a protected person on the date that any protected
 person first receives written notice of that claim or suit.

16 We'll also consider all claims or suits for covered loss caused
 17 by an act, or series of related acts, to have been made or
 18 brought on the date that the first of those claims or suits is
 first made or brought.

19 *Series of related acts* means two or more acts, including
 20 repeated or continuous acts, that are related to the same loss.

21 (All emphasis in original.) St. Paul contends the claims raised in the
 22 Federal Litigation were not made until the Federal Litigation was filed
 23 on April 24, 2001, which occurred after the St. Paul Policy had expired
 24 on February 7, 2001. In response, Robideaux maintains there is coverage
 25 for the City's contribution claim in the Federal Litigation because (1)
 26 it was a "claim or suit" made during the Policy period or, alternatively,

1 (2) it was a "claim or suit" made after the Policy period but which was
2 related to an earlier covered claim or suit.

3 a. *Claim*

4 The Court finds the City's State Litigation allegations against
5 Robideaux at the time the Claim Report was submitted to St. Paul included
6 a "demand that [sought] damages;" therefore, the definition of "claim"
7 in the St. Paul Policy is satisfied.

8 b. *"That Claim or Suit"*

9 The first above-quoted St. Paul Policy paragraph states that a claim
10 will be considered made when Robideaux received written notice of "that
11 claim or suit." (Emphasis added.) Here, Robideaux received notice of the
12 State Litigation in July 2000 and notice of the Federal Litigation on
13 April 24, 2001. Clearly, the State Litigation claim was brought against
14 Robideaux during the policy period of February 7, 2000, to February 7,
15 2001. However, Robideaux is not seeking coverage for the State
16 Litigation claim - as such was voluntarily dismissed by the City when the
17 Federal Litigation was filed by the bondholders; rather, Robideaux seeks
18 coverage for the contribution claim asserted by the City in Federal
19 Litigation. The Court finds this first Policy paragraph inapplicable
20 given the use of the phrase "that claim or suit." The use of the term
21 "that" indicates a reference to a specific demand for damages. The City
22 did demand damages from Robideaux in both lawsuits; however, the demands,
23 although premised upon similar facts, were based upon differing legal
24 arguments - the Federal Litigation arguments being more expansive.
25 Accordingly, the Court finds the City's contribution claim in the Federal
26 Litigation is not "that claim" in the State Litigation. Therefore,

1 Robideaux did not receive notice of "that [contribution] claim" during
 2 the policy period.

3 c. *"Series of Related Acts"*

4 The next question is whether the claim was timely made under the
 5 policy language that St. Paul will "consider all claims or suits for
 6 covered loss caused by an act, or series of *related acts*, to have been
 7 made or brought on the date that the first of those claims or suits is
 8 first made or brought." (Emphasis added.) In order to make the
 9 determination of whether the City's contribution claim in the Federal
 10 Litigation was caused by an act or series of related acts to the State
 11 Litigation, case law shows that it is critical to look not at the label
 12 affixed to the causes of action in the lawsuits, but rather look at the
 13 underlying factual basis for the lawsuits. See *Cont'l Cas. Co. v. Wendt*,
 14 205 F.3d 1258 (11th Cir. 2000); *Gregory v. The Home Ins. Co.*, 876 F.2d
 15 602, 606 (7th Cir. 1989). Also, "related" is not an ambiguous term and
 16 can encompass both casual and logical connections. *Valley Furniture &*
 17 *Interiors, Inc. v. Transp. Ins. Co.*, 107 Wash. App. 104, 108 (2001).

18 The City's First Amended Complaint in the State Litigation alleged,
 19 in pertinent part:

20 28. Neither the Developers, Robideaux nor Walker ever disclosed
 21 to the City either Walker's prior relationship with the
 22 Developers and Robideaux or the existence of the prior study
 23 performed for the Developers and Robideaux.

24 29. By mid-October 1996, the Developers and Robideaux had
 25 persuaded various city officials to adopt a highly unusual
 26 valuation methodology that would more than double the bonds
 27 that would be required to acquire, renovate and expand the
 28 garage.

29 30. The net operation revenues from the Walker Feasibility
 30 Analysis were the primary vehicle through which the "doubling"
 31 was accomplished.

26 . . .

1 57. By February 1, 2000, the financial condition of the Parking
 2 Authority had become shockingly clear . . . parking revenues
 3 could not come close to covering (1) debt service on the
 4 Foundation's bonds; (2) the Garage's operating and maintenance
 5 account; and (3) the ground lease payments charged by the
 6 Developers.

7 58. The Foundation's bonds have been downgraded twice because
 8 Garage revenue was not adequate to cover debt service on the
 9 \$31.5 million bonds issued by the Foundation the Developers
 10 established to acquire the Developer's Garage. By mid-June
 11 2000, it had become apparent that the situation was not likely
 12 to improve in the near future. . . No one has claimed that the
 13 City has any responsibility for the debt service, which is
 14 specifically precluded by Ordinance C31823.
 15 . . .

16 61. The operating revenue projected by [Keyser-Marston
 17 Associates, in April 2001] was much less than the revenue
 18 projected in the Walker Feasibility Analysis, but approximately
 19 the same as projections Walker had made for Robideaux before
 20 Walker was hired by the City. . .
 21 . . .

22 95. Walker, Robideaux and perhaps various John Does and Jane
 23 Does conspired to withhold the prior relationship between
 24 Walker and Robideaux and to conceal the existence of the report
 25 produced during that relationship.

26 96. The Developers, Walker, Robideaux and perhaps various John
 27 Does and Jane Does conspired to persuade the City to adopt a
 28 methodology incorporating the Walker projections that would
 29 result in an "appraised value" that was more than twice the
 30 fair market value of the existing structure and the agreed upon
 31 renovation and expansion of that structure.

32 97. Defendants Walker, Robideaux, the Developers and perhaps
 33 various John and Jane Does agreed to enter into this conspiracy
 34 in order to obtain public funds for private purposes.

35 (Ct. Rec. 35: Warren Decl. Ex. C.) Based on these alleged facts, the
 36 City asserted four causes of action against Robideaux in the State
 37 Litigation: (1) civil conspiracy, (2) quantum meruit, (3) accounting, and
 38 (4) declaratory judgment regarding Ordinance C31823. One of the requests
 39 for relief sought by the City was "[a]warding Plaintiff damages in an
 40 amount to be proved at trial." *Id.* p. 28 ¶ 5.

41 On April 24, 2001, the Federal Litigation was initiated by U.S.
 42 Bank, John Nuveen & Company, and other mutual funds that had invested in
 43 the Garage bonds related to the financing of the RPS Project against a

1 number of defendants, including Robideaux, alleging state and federal
2 securities fraud, common law fraud, and common law negligent
3 misrepresentation in connection with the sale of the Garage bonds. (Ct.
4 Rec. 86 ¶ 16.) On this same day, the City answered this complaint and
5 cross-claimed against Robideaux and other defendants. *Id.* ¶ 17. The
6 City's cross-claims included a request for contribution against these co-
7 defendants in the event the City was held liable to the investor-
8 plaintiffs in the Federal Litigation. *Id.* ¶ 20.

9 St. Paul makes much of the fact that the State Litigation did not
10 include either securities fraud allegations or the bondholders. However,
11 the St. Paul Policy does not require that the causes of action in
12 differing lawsuits be the same or even similar; rather what is critical
13 is that the claims or suits be caused by an act or series of related
14 acts. Although the factual allegations in the two lawsuits are not
15 identical, the City argued in both lawsuits that Robideaux acted
16 wrongfully by failing to disclose to the City that Robideaux had a prior
17 relationship with Walker and the Developers and that, due to this
18 undisclosed relationship or "conspiracy," they encouraged the City to
19 sell over-inflated municipal bonds. The claims and suits were clearly
20 caused by a series of related acts; accordingly, St. Paul was on notice
21 that securities fraud claims were likely in the future, especially since
22 the Claim Report disclosed that U.S. Bonds had filed a motion to
23 intervene. Therefore, the Court finds the claims brought by the City
24 against Robideaux in the State Litigation and in the Federal Litigation
25 were caused by a series of related acts and thus the City's contribution
26 claim in the Federal Litigation is to be considered "made or brought on

1 the date" that the State Litigation claim was made, i.e. in July 2001,
 2 within the St. Paul Policy period. Thus, the Court finds the claim was
 3 timely made. See *Cont'l Cas. Co.*, 205 F.3d at 1264; *Harbor Ins. Co. v.*
 4 *Arthur Andersen & Co.*, 149 Ill. App. 3d 235, 237-38 (1986).

5 2. The Claim was Timely Reported

6 In order for coverage to exist under the St. Paul Policy, Robideaux
 7 must also have satisfied the "timely reporting" requirement. The
 8 Policy's "reporting" provisions state:

9 **When we consider a claim or suit to be first reported to us:**
 10 We'll consider a claim or suit for covered loss . . . to be
 11 first reported to us on the date that we or our program
 administrator first receive a written notice from any protected
 person of a claim or suit made or brought against a protected
 person.

12 **When we consider an act or event to be first reported to us.**
 13 We'll consider a covered act or event to be first reported to
 14 us on the date that we first receive written notice of an act
 15 or event from any protected person. However, we won't accept
 such a notice unless it also describes what loss may result
 from the act or event.

16 (Emphasis in original.)

17 a. *"Claim or Suit"*

18 Robideaux notified St. Paul of the State Litigation on February 7,
 19 2001, through its agent John Pearl via the Claim Report. (Ct. Rec. 86
 ¶ 8 & 9.) Because the Court found, as set forth above, that the City's
 21 contribution claim against Robideaux in the Federal Litigation was not
 22 "that claim or suit," the Court finds Robideaux did not timely report the
 23 City's contribution claim to St. Paul under the "that claim or suit"
 24 reporting requirement given that the City's contribution claim was not
 25 reported to St. Paul until April 4, 2003 - well after the February 7,
 26 2001, expiration (and any 60 day limited extended reporting period).

1 b. *"Act or Event"*

2 Because the Court finds the claim was timely made under the "series
3 of related acts" provision, the second portion of the "reporting"
4 provision applies: "We'll consider a covered act or event to be first
5 reported to us on the date that we first receive written notice of an act
6 or event from any protected person. However, we won't accept such a
7 notice unless it also describes what loss may result from the act or
8 event." Robideaux submitted the Claim Report to St. Paul on February 7,
9 2001, which included (1) an Appendix providing background on the claim
10 and related litigation, and requesting consideration of Robideaux's claim
11 under the Policy, (2) the First Amended Complaint in the State Litigation
12 (minus the exhibits), (3) Robideaux's Opposition to Motion for Default,
13 and (4) Order on default in the State Litigation. The Court finds the
14 contents of this Claim Report were sufficient to serve as "written notice
15 of an act or event . . . [which] describes what loss may result from the
16 act or event." In addition, the factual allegations in the State
17 Litigation complaint were sufficient to put St. Paul on notice that the
18 City may seek recovery from Robideaux for any and all loss it incurred
19 as a result of the issuance of the municipal bonds. Even though the
20 bondholders were not involved in the litigation, the Claim Report
21 notified St. Paul that U.S. Bonds had filed a Motion to Intervene.

22 The Court does not find *KPFF, Inc. v. California Union Insurance*
23 *Co.*, 56 Cal. App. 4th 963 (1997), which was relied upon by St. Paul,
24 controlling. Because the Court finds the City's claims against Robideaux
25 in the State Litigation were related to the City's contribution claim
26 against Robideaux in the Federal Litigation, the Court concludes there

1 was a reasonable basis for St. Paul upon receiving the Claim Report in
 2 February 2001 to believe that the City's damages would include losses
 3 related to the overinflation of the Garage bonds.

4 Accordingly, the Court finds coverage is provided by the St. Paul
 5 Policy for the City's contribution claim against Robideaux in the Federal
 6 Litigation because it was timely made and timely reported. Therefore,
 7 **St. Paul's motion is denied in part and Robideaux's motion is granted in**
part.

9 3. The Securities Fraud Exclusion Does Not Apply

10 St. Paul argues the Policy's securities fraud exclusion applies
 11 because the bondholder plaintiffs in the Federal Litigation alleged
 12 securities fraud causes of action, relying in large measure on *Bendis v.*
 13 *Federal Insurance Co.*, 958 F.2d 960 (10th Cir. 1992). The Court finds
 14 the exclusionary language in *Bendis* is much broader than that in the St.
 15 Paul Policy, which reads:

16 We won't cover loss that results from any violation of:

- 17 • the Securities Act of 1933 as amended;
- 18 • the Securities Exchange Act of 1934 as amended
- 19 • any State Blue Sky or Securities Law or similar
 state or federal statute or regulation.

20 Given the narrower language of the St. Paul Policy exclusion, the Court
 21 finds the exclusion does not apply. There was never a finding that any
 22 of these securities laws were violated. Furthermore, this Court held as
 23 a matter of law in *In re RPS* (EDWA Cause No. CV-01-0127-EFS) that Asset
 24 Guaranty Insurance Company had no standing to assert any securities law
 25 claim and thus, at the time of Robideaux's settlement with the City, the
 26 City's only contribution claim arising from its settlement with Asset
 Guaranty was for negligent misrepresentation. Therefore, the City's

1 contribution claim does not involve any losses resulting from a violation
 2 of the listed securities laws. Accordingly, the Court **denies St. Paul's**
 3 **motion in part.**

4 4. Bad Faith and Coverage by Estoppel

5 St. Paul asked for summary judgment on the issue of bad faith.
 6 After hearing the Court's ruling regarding coverage issues, St. Paul
 7 agreed that bad faith issues would be more appropriately addressed at a
 8 later date (Ct. Rec. 88); accordingly, the Court **denies these portions**
 9 **of St. Paul's motion with leave to renew.**

10 Robideaux had also raised the alternative argument of coverage by
 11 estoppel due to St. Paul's alleged bad faith. Following the Court's oral
 12 rulings, Robideaux agreed that its coverage by estoppel argument was
 13 moot. Accordingly, the Court **denies as moot Robideaux's motion in part.**

14 **II. KEMPER CASUALTY INSURANCE CO.'S MOTION FOR SUMMARY JUDGMENT
 AGAINST DEFENDANT AND CROSS COMPLAINANT RWR MANAGEMENT, ET AL. (Ct.
 15 Rec. 42)**

16 At the hearing, because the Court found coverage existed under the
 17 St. Paul policy for the City's contribution claim in the Federal
 18 Litigation, the parties agreed Kemper's motion, which asked the Court to
 19 dismiss Robideaux's claims for breach of contract and declaratory relief
 20 related to policy no. QT-012738-00, effective February 7, 2001, to
 21 February 7, 2002, should be granted. Accordingly, Kemper's motion is
 22 **granted.**

23 For the above-given reasons, **IT IS HEREBY ORDERED:**

24 1. St. Paul's Motion for Summary Judgment (**Ct. Rec. 32**) is **DENIED**
 25 **IN PART** (claim was timely made and reported and securities law exclusion

1 does not apply) and DENIED WITH LEAVE TO RENEW IN PART (bad faith
2 issues).

3 2. Robideaux's Motion for Summary Judgment on Claims by and
4 Against St. Paul (**Ct. Rec. 49**) is **GRANTED IN PART** (St. Paul owed a duty
5 to indemnify and defend Robideaux with respect to the City's contribution
6 claim asserted in the Federal Litigation because the claim was timely
7 made and reported) and **DENIED AS MOOT IN PART** (coverage by estoppel).

8 3. Kemper's Motion for Summary Judgment Against Defendant and
9 Cross Complainant RWR Management, et al. (**Ct. Rec. 42**) is **GRANTED**.

10 **IT IS SO ORDERED.** The District Court Executive is directed to file
11 this Order and provide copies of this Order to counsel.

12 DATED this 13th day of November 2006.

14 _____ S/ Edward F. Shea
15 EDWARD F. SHEA
United States District Judge

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